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PART II—Section 3

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No. 204] NEW DELHI, WEDNESDAY, AUGUST 5, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 22nd July 1953

S.R.O. 1516.—Whereas the election of Shri Narayan Sambhuji Karemore, as a member of the Legislative Assembly of the State of Madhya Pradesh from the Tumsar constituency of that Assembly, has been called in question by an Election Petition (No. 64 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Awoo Malku Makade, Superintendent, Tilak Rashtriya Vidyalaya, Tumsar, Tehsil and District Bhandara;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, NAGPUR

Shri N. H. Mujumdar, B.Sc., LL.B.,—*Chairman.*

Shri S. C. Rai, M.A., LL.B.,—*Member.*

Shri Abdul Razak Khan, Advocate—*Member.*

ELECTION PETITION No. 1 of 1952

1. Shri Awoo Malku Makade, age 62 years, Superintendent, Tilak Rashtriya Vidyalaya, Tumsar, Tahsil and District Bhandara—*Petitioner.*

Versus

1. Shri Narayan Sambhuji Karemore, Merchant, age 48 years, House No. 22, Rajendra Ward, Tumsar Tahsil and District Bhandara;
2. Shri Zingar Nathu Choudhari, Dalal age 40 years, Ward No. 14, Tilak Ward Tumsar, Tahsil and District Bhandara;
3. Shri Madhorao Sheolal Patel cultivator age 70 years, Tilak Ward, Tumsar, Tahsil and District Bhandara;
4. Shri Kisan Palkuji 42 years, Ward No. 6, Tumsar, Tahsil and District Bhandara.—*Respondents.*

PRESENT:

Shri R. M. Hazarnavis for the Petitioner.

Shri Y. S. Tambe for the respondent No. 1.

ORDER

(Delivered this 9th day of July 1953)

(1) This is a petition presented under Section 81 of the Representation of the People Act, 1951, challenging the election of the Respondent No. 1, the returned candidate, on the ground of certain irregularities in the election and contravention of or non-compliance with the provisions of the Representation of the People Act and Rules and Orders made thereunder, during the election which, according to the Petitioner, materially affected the result of the election

(2) The Respondents Nos. 1 and 2 only appear and the others did not appear and allowed the case to proceed *ex parte* against them. The respondents Nos. 1 and 2 denied all the allegations made by the Petitioner and the following issues, therefore, arose for decision in this case. We have not reproduced the contentions raised by the Petitioner as they would be apparent from the issues.

*Issues**Findings.*

1. (a) Was the Petitioner a candidate for election held on 22nd December 1951 for the Tumsar Legislative Assembly Constituency of the M.P. Legislative Assembly?

Yes.

(b) Were the respondents also candidates?

Yes.

2. Was the list of Polling stations not published in the manner directed by the Election Commission? And in particular,

It was published

(a) (i) Was the list made ready for publication only on the evening of 18th December 1951? And could not any candidate legally appoint a polling agent on this account?

See paragraph 5.

(ii) Were no lists sent to the Electoral Registration Officers

See paragraph 8.

(iii) Was no public notice given by beat of drum?

See paragraph 8.

(iv) Was not the list supplied to the petitioner even though he had informed the Returning Officer his address of Tumsar?

See paragraph 8.

(b) (i) Did at least one set of the list of polling stations not include the Polling station for recording the votes of electors residing in the villages of Bori, Kosti and Seoni Khurd?

Yes.

(ii) Was it proposed before the publication of the list that the electors of the villages Bori, Kosti and Seoni Khurd were to vote at Umarwada?

Yes.

Was the Polling station changed to Bamhani at the instance of the petitioner?

Yes

(iii) Was the fact that the electors of the villages of Bori, Kosti and Seoni Khurd were to vote at the Polling Station Bamhani not properly published or announced by beat of drum in these villages; and was the petitioner prevented from

It was published by beat of drum.

Was the Petitioner prevented from appointing a polling agent for the second polling booth at polling station Bamhani and could not more than 300 voters of these villages vote, on this account?

First part—No.
Second part—They could vote.

(iv) Did the Returning Officer reject the Polling agents appointed by respondents 2 and 3 and could not these candidates properly contest the election on this account?

Yes, as regards Respdt. No. 2. The rest of the issue has not been proved.

3. Did the presiding Officer at Polling Station Ashti illegally retard the rate of voting? In particular,

No.

(i) did he start the voting at 8-50 A.M. instead of 8-30 A.M. as fixed and was a complaint lodged by the Petitioner's polling agent in this connection with the Presiding Officer?

First part—No.
Second part—Yes, but Complaint was not true.

*Issues**Findings.*

- (ii) did he allow only woman electors to vote for a considerable time and turn back the male electors? No.
- (iii) did he allow only one door for entry and exist for both the booths and did this affect the polling? See paragraph 13.
- (iv) did he not keep sufficient stock of slips of paper containing the number of elector and did he on this account use the same slip over and over again? ... Not proved.
- Was a complaint made by the Petitioner's agent to him in this connection? ... No.
- (v) did he permit respondent No. 1 and Raghunath Laturu to enter the polling compartment and close the polling at 4 P.M. on the demand of respondent No. 1 even though more than 300 electors were present for voting? Were these electors illegally prevented from voting as alleged? ... First part—Yes.
Second part—No, he only suspended polling.
Third part—No.
- (vi) did he conceal the votes lying over the ballot boxes and allow some electors to vote at 8 P.M. without ascertaining whether they were among the 300 electors who re present in the evening? ... First part—Yes.
Second part—No.
4. Was the election materially affected by any of the above irregularities? ... No.
5. Is the Petition liable to be dismissed as the candidates for the election to the House of People have not been joined as parties to the election petition? ... No.
6. Relief? ... Petition dismissed.

REASONS FOR THE FINDINGS

(3) *Issue No. 1 (a) and (b).*—Exs. P-2, P-3 and R-5 clearly prove that the petitioner and the respondents were duly nominated as candidates for election from the Tumsar Constituency of the Madhya Pradesh Legislative Assembly. We find in the affirmative on both parts of issue No. 1.

(4) It would appear from Ex. P-6, the form of return of election, that only four out of the candidates contested the election, and this leads to the inference that the 5th candidate Shri Kisan Paikujhi had withdrawn his candidature within the time allowed by law. There is also no dispute regarding this point.

(5) *Issue No. 2. (a) (i) to (iv) and (b) (i) to (iv).*—The evidence of Shri T. N. Verma (P.W. 15) shows that the list of polling stations originally proposed was modified on the suggestion made by the electors or the candidates. His evidence shows that it was at the suggestion of the petitioner himself that the villages Bori, Kosti and Seoni Khurd were attached to the Bamhani Polling Station. It appears that a separate Polling Booth was constituted for the electors of Bori, Kosti and Seoni Khurd. This list of Polling stations was accordingly revised and sanction to this revised list was received in the office of Shri Verma, who was the District Election Officer, Bhandara, on 16th December 1951. The list was published, according to the instructions of the Election Commission, on 18th December 1951, as will appear from the evidence of Shri Verma (P.W. 15). It does not appear from his evidence that it was in the evening that the lists were made ready for publication. His evidence shows that the lists were actually published on 18th December 1951 in his office and were sent out to the Tahsildar and other Officers for publication.

(6) It would appear from the evidence of Shri T. N. Verma (P.W. 15) that the Petitioner had appointed his polling agents, and these lists were received on 19th December 1951 and accepted by the Returning Officer. It would appear, thus, that the petitioner succeeded not simply in having polling stations created according to his wishes but also in securing acceptance of the notices of appointment of agents on 19th December 1951. The office hours during which the notices could be delivered were from 11 A.M. to 5 P.M.; and even assuming that these notices were delivered on 19th December 1951 at the earliest hour, viz. 11 A.M. there could not have been three clear days between the delivery of the notices and the commencement of polling at the different polling stations. The hour of commencement of polling was 8-30 A.M. on 19th December 1951, and no notices of appointment of agents could be accepted after 8-30 A.M.

on 19th December 1951. Thus, taking into account the usual office hours, it was necessary for candidates to serve notices on the Returning Officer before 5 P.M. on 18th December 1951. The service of notices regarding the appointment of his polling agents by the Petitioner was allowed to be effected presumably after 11 A.M. on 19th December 1951, and the petitioner really suffered from no disadvantage.

(7) There is no evidence to show that there was not due publication of the lists of polling stations. The evidence of Chandru (R1 W3), however, clearly shows that at the village Bori the Kotwar of the village proclaimed by beat of drum that the electors in his village had to go to Bamhani polling station to cast their votes. His evidence also shows that all the electors who wanted to cast their votes did go to Bamhani in consequence of this proclamation. It would be found that a large percentage of electors from Bori, Kosti and Seoni Khurd did go and vote at the polling station Bamhani. The percentage of electors who attended the Bamhani Polling Station was not less than the percentage at the other polling stations. This would support Chandru's evidence that the lists of polling stations had been duly published in the villages.

(8) In view of the evidence discussed above we hold that the list of polling stations was duly published (in the manner directed by the Election Commission). As regards Issue No. 2 (a) (i), we hold that the list was actually published on 18th December 1951 and candidates who, like the petitioner, were really keen on contesting the election could and did appoint polling agents for themselves. As regards issue No. 2 (a) (ii) & (iii), we hold that the lists were sent to the Officers to whom it was necessary to send them, and they were duly published by beat of drum. There is no evidence to show that a list was actually supplied to the Petitioner; but there is clear evidence to show that the Petitioner knew of the revised list probably on 18th December 1951 and he did serve notices on the Returning Officer regarding appointment of his polling agents at the different polling booths. This matter was within the personal knowledge of the Petitioner but he did not care to enter the witness box.

(9) It is to be noted that the petitioner had appointed a polling agent for Umarwada, but on becoming cognizant of the change of the Polling station for the villages Bori, Kosti and Seoni Khurd, he changed Umarwada into Bamhani in the form of appointment of Polling agent. This is evident from the entries in the Form at page 125 of the file of Form No. 6. The date on this form is 18th December 1951, and the covering letter sent with the forms bears the date 19th December 1951 (Page No. 3 of the said file). It appears from the evidence of Shri T. N. Verma (P.W. 15) that one set out of the typed copies of the list of polling stations in his file did not include the villages Bori, Kosti and Seoni Khurd. But it has not been shown that such a list was sent out to any of the electors or Officers-in-charge of the arrangements regarding the election or that it has in any way affected the election to the Tumsar Constituency of the Madhya Pradesh Legislative Assembly. We, therefore, find in the affirmation on Issue No. 2(b) (i), but in the negative on the second part of Issue No. 2(b) (iii). We find in the affirmative on Issue Nos. 2(b) (ii) and 2(b) (iii) first part. As regards Issue No. 2(b) (iv) it is clear that the Returning Officer rejected the Notices regarding the appointment of the polling agents sent to him by Shri Zingar Nathu. This was because they were presented after the closing hour of his office. He was right in doing it, and the rejection of the polling agents by the Returning Officer cannot be made a ground for complaint as the Returning Officer was justified in doing it under the Rules. The Returning Officer would have been justified even in rejecting the forms of appointment of agents submitted by the Petitioner (i.e. notices of appointment of agents) because they were not submitted three clear days before the commencement of polling for the Tumsar Constituency, since they would not have been submitted earlier than 11 A.M. on 18th December 1951.

(10) *Issue No. 3(i) to (vi).*—There is no evidence to show that the Presiding Officer at the Polling Station Ashti retarded the pace of polling. Some of the applications made by the Petitioner's agent Mohan (P.W. 2) importing a command to the Presiding Officer are amusing. It is curious that no action was taken against the polling agent by the Presiding Officer who patiently, rather submissively, swallowed all the dictatorial edicts from the said polling agent. The Supervising Officer must have presumably become cognizant of them, as the Petitioner's polling agent appears to have repeated his complaints to him. The application reveal systematic action on the part of Mohan (P.W. 2) to bully the Presiding Officer. The submissive conduct on the part of the Presiding Officer may perhaps have been the result of a feeling that Mohan (P.W. 2) was the political representative of a Minister and made the applications with the

consciousness of what it all meant. The Petitioner should be the last person to complain against such a Presiding Officer. It is, in our opinion, necessary that, if the elections are to be free and fair, serious notice ought to be taken by all officers conducting elections of any such conduct on the part of polling agents or other persons interested in any of the candidates contesting the election.

(11) Beyond the evidence of Mohan (P.W. 2), there is no evidence to show that polling started at 8-50 A.M. and not at 8-30 A.M. The report of the Presiding Officer Ex.P-7 shows that the polling started exactly at 8-30 A.M. Shri Golhar (P.W. 16) was obviously not present at 8-30 A.M. at Ashti and yet he has objected to the portion of the report mentioning 8-30 A.M. as the time at which the polling started at Ashti. It seems, this officer Shri Vinayak Golhar, allowed himself to be led away by the report he had received from Mohan (P.W. 2), the polling agent of the Petitioner. Shri Golhar's evidence shows that he was at Ashti between 7 and 8 A.M. and not at the time of the commencement of the poll. He yet says that complaint had been made to the Presiding Officer in his presence that the polling had started 10 minutes late. It would appear improbable that he could have been present at the time the alleged complaint was made. If the complaint had really been made in his presence, one would have expected that it would have found place in his report to the Returning Officer; but there is not a word said about it in the report at page 57 of File No. 4. Thus, Golhar's evidence that a complaint was made to the Presiding Officer in his presence regarding the late commencement of polling does not appear to be true. We, therefore, find in the negative on the first part of Issue No. 3 (i). We hold that a complaint was made by the Petitioner's polling agent but that complaint was not true.

(12) The Petitioner's complaint that only women electors were allowed to vote for a considerable time and men electors were turned back does not appear to be true. The Petitioner's agent, who was zealously working for the Petitioner at the polling Station Ashti and who went to the extent of even demanding explanations from the Presiding Officer, made several complaints to the Presiding Officer, but there is nothing to show that preferential treatment given to the women electors was responsible for men electors' going away without casting their votes. Giving facility to women electors to vote could not be found fault with and there is nothing to show that such women electors were for any particular candidate. In one of the applications it is only stated that the electors were returning displeased because the Returning Officer caused them inconvenience. If really any inconvenience was caused this polling agent who took the liberty of calling upon the Presiding Officer to explain certain conduct on his part (*vide* Exs. P-16, P-17 and P-18), and who commanded him to submit an account of ballot papers entrusted to him and to remove the 'Sipahi' at the gate (Ex. P-20), would not have failed to mention the manner in which any inconvenience was alleged to have been caused to the electors. We, therefore, find in the negative on Issue No. 3 (ii).

(13) It appears from the evidence on record that the School building in which one booth was situate, as also the *pandal* in which the other booth was located had only one door for entrance and exit. There was not one door for entrance and exit for both the booths, but each booth had a separate door and at each booth the same door was used for entrance and exit. This was because two doors were not available and entrance and exit had to be effected from the same door. The number of electors who cast their votes at each of the booths would, however, show that the polling was not affected in any way on account of the same door being used for entry and exit.

(14) There is no good evidence to show that the stock of slips of papers was insufficient or that the alleged insufficiency in any way affected the polling at any of the polling booths at Ashti. In none of the several complaints made in writing by Mohan (P.W. 2) was this fact mentioned. We find in the negative on the second part of Issue No. 3(iv), and hold that the Petitioner has failed to prove that sufficient stock of slips of papers had not been maintained by the Presiding Officer at Ashti.

(15) It appears from the evidence of Mohammad Khan (R-1 W-1) and Harischandra (R-1 W-2) that polling continued right upto 4-30 P.M. The evidence of Shri Jakatdar (P.W. 17), however, is that at 4 P.M. a number of persons had collected near the Polling Station, some inside the Polling Station and some outside, and complained that there were no arrangements for them to cast their votes and they were not getting any entry into the polling booths; but it cannot be predicated that all of them were electors. At about 5-45 P.M. Shri Golhar noticed 200 to 300 persons present within the Polling Station

precincts, probably waiting to vote. His evidence would show that at about 6-30 P.M. 80 to 90 persons were allowed to come inside the compound of the Polling Station and slips of paper were issued to them. This was by way of precaution to prevent persons who were not present at the Polling Station at the closing hour from effecting entrance into it thereafter and casting their votes. It is not explained why Shri Golhar, who was the Supervising Officer did not direct the Presiding Officer to issue slips immediately to 200 to 300 persons present within the Polling Station precincts. It is possible there was no light and the arrangements for providing light at the Polling Station took some time and the electors, therefore, went away; but if in the circumstances the electors did not choose to wait, that was not the fault of the Presiding Officer.

(16) It would appear from Shri Golhar's evidence that the polling recommenced at 8 P.M. It would appear from Shri Panse's report Ex. P-7 that at about 4 P.M. it was detected that a heap of ballot papers was lying on each of the ballot boxes. The report of the Respondent No. 1's polling agent to the Presiding Officer, Ex. P-14, would show that the heap of ballot papers on the ballot boxes probably covered the slits through which the ballot papers were inserted into them. After this was reported, polling appears to have been suspended till the ballot papers were removed and cancelled.

(17) It appears, the Petitioner's agent had raised an objection to the Presiding Officer's entering into the polling compartment. The domineering attitude of the Petitioner's agent (his issuing commands that the Presiding Officer shall have to allow 20 minutes beyond the closing hour (Ex. P-9); his directions to the Presiding Officer to warn certain persons who are alleged to have been canvassing for a certain candidate and to prohibit their entry within the precincts of the Polling Station; his asking him to remove the 'Sipahi' guarding the gate; his asking him for permission to admit certain electors (Ex. P-15); his expressing a suspicion that the Presiding Officer had joined hands with the Respondent No. 1; and, last but not the least, his calling upon the Presiding Officer to explain what talk he had with the Respondent No. 1 and why he had entered the polling compartment along with the Respondent No. 1 and to submit account of the stock of ballot papers) seems to have made the Presiding Officer very nervous, and it seems he may have found it difficult to properly and effectively discharge his duties. It appears to us that the Presiding Officer should have taken action against the agent; but probably the fact that the agent was the agent of a Minister weighed on his mind and prevented him from taking action. Naturally, therefore, the only course open to him was to suspend the election. It was within his powers to suspend the election for a short interval and he did it. There was nothing wrong in his doing it.

(18) It appears from the evidence of Mohammad Khan (R.1 W.1) and Harischandra (R.1. W.2) that at about 4-30 P.M. Shri Panse asked all the electors present to get into the school compound, and thereafter, it seems, he was busy counting and cancelling the ballot papers which had collected on the ballot boxes. Arrangements for light were made and voting appears to have been resumed at about 8 o'clock. If any of the electors after having secure admission into the Polling Station left the place without voting because they did not like to wait, the Presiding Officer could hardly be held responsible.

(19) As regards the first part of Issue No. 3(v), we hold that Respondent No. 1 and Raghunath Lataru entered the polling compartment along with the Presiding Officer to find out if ballot papers had collected on the ballot boxes. The Petitioner's agent was asked by the Presiding Officer to accompany him but he refused to do so. There is no evidence to show that the electors were prevented from voting.

(20) There is nothing to show that out of the electors who voted after 8 P.M. there were any who were not present at the closing hour of the poll, 4-30 P.M. The Petitioner's agent did not also raise any objection as regards any particular elector that he had not been present at the closing hour of the poll within the Polling Station precincts. The objection giving rise to the second part of Issue No. 3 (vi) thus appears to be unfounded. We find in the affirmative on the first part of Issue No. 3 (vi) but in the negative on the second part.

(21) Issue No. 4.—As regards Issue No. 4, in our opinion, the Petitioner has not succeeded in proving any of the irregularities pleaded by him. He did succeed in proving that polling had been suspended at 4 P.M. But in view of the evidence that the electors present at 4-30 P.M. were called inside the Polling Station and were allowed to vote, there was nothing which could be said to have materially affected the election. We find accordingly on Issue No. 4.

(22) *Issue No. 5.*—This is a petition against the election to the Madhya Pradesh State Assembly and not against the election to the House of People. It was not, therefore, necessary to join as parties the candidates for the election to the House of People in this petition. We find in the negative on Issue No. 5.

(23) The election petition fails and is dismissed. The Petitioner shall bear the Respondent No. 1's costs in addition to his own Counsel's fee Rs. 250.

Dated, the 9th July 1953.

(Sd.) N. H. MAJUMDAR, *Chairman.*

(Sd.) A. RAZAK, *Member.*

(Sd.) S. C. RAI, *Member.*

SCHEDULE OF COSTS INCURRED

Petitioner	Amount	Respondent No. 1	Amount	Respdt. Nos. 2 to 4.
	Rs. As. Ps.		Rs. As. Ps.	
1. Stamp for Election Petition.	...	Stamp for Power . . .	3 0 0	
Publication charges of Election Petition.	160 0 0	Stamp for Exhibits . . .	13 2 0	
3. Stamp for Power . . .	2 0 0	Stamp for Service of processes.	7 12 0	
4. Stamp for Exhibits . . .	16 8 0	Subsistence of witnesses . . .	15 8 0	
5. Pleader's fee. (not Certified.)	...	Misc. Applications and Affidavits.	3 0 0	
6. Service of Processes . . .	23 4 0	Pleader's Fee, (not certified)	...	
7. Subsistence for witnesses	203 6 0	Misc. Expenses . . .		
8. Applications and Affidavits.	4 0 0			
9. Misc. Expenses			
TOTAL . . .	409 2 0		42 6 0	Nil.

The 9th July, 1953.

(Sd.) N. H. MAJUMDAR, *Chairman.*

(Sd.) A. RAZAK, *Member.*

(Sd.) S.C. RAI, *Member.*

[No. 19/64/52-Elec.III/12176.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

